Canadian Transportation Agency

Office des transports du Canada

2007-2008 annual REPORT

Making Transportation Efficient and Accessible for All

Available in multiple formats

Canada

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Canadian Transportation Agency

Office des transports du Canada

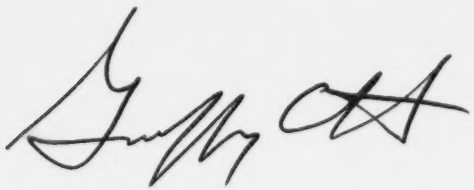
May 2008

The Honourable Lawrence Cannon, P.C., M.P.
Minister of Transport, Infrastructure and Communities
Tower C – Place de Ville
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour to present to you the Annual Report of the Canadian Transportation Agency for the period 2007-08, including the Agency's assessment of the operation of the Act and any difficulties observed in its administration.

Yours sincerely,



Geoffrey C. Hare
Chair and Chief Executive Officer

Canada

TABLE of **CONTENTS**

2 **Message from the Chair and CEO**
4 **Highlights**
6 **Agency Members and the CEO**
8 **About Us**
9 Our strategic priorities
11 A mandate strengthened and expanded
13 An organizational renewal strategy
16 **Resolving Transportation Disputes**
17 Anticipating and eliminating problems of access
20 Facilitation: Finding informal solutions
20 Facilitating access to transportation services
20 Air Travel Complaints Program
23 Mediation: Bringing the parties together
24 Final offer arbitration: Business-related rail matters
25 Adjudicating transportation disputes
25 Accessibility
30 Air
32 Rail
35 Marine
38 **Industry Regulation and Determinations**
38 Air
44 Rail
47 Marine
50 **Assessment of the Act**
55 **Appendices**
56 **Appendix A**: Agency Rulings
57 **Appendix B**: Alternative Dispute Resolution Mechanisms
58 **Appendix C**: Air Travel Complaints
67 **Appendix D**: Air Licensing and Charters
70 **Appendix E**: Rail Transportation
70 **Appendix F**: Marine Transportation
71 **Appendix G**: Accessible Transportation
71 **Appendix H**: Enforcement Activities
72 **Appendix I**: Cases Before the Courts

WE WELCOME THE CHALLENGE TO WORK CLOSELY WITH TRAVELLERS AND STAKEHOLDERS [...]

MESSAGE from the **CHAIR AND CEO**

Agency at a Crossroads

Transportation has been a critical component of Canada's economic and political development, and for more than 100 years regulatory agencies have shaped the environment for transportation users and providers.

The Canadian Transportation Agency and its predecessors have been directed by statements of national policy that have evolved to recognize competition and market forces as the prime agents in providing viable and effective services. Regulation has been assigned roles where necessary to achieve accessibility and efficiency across the transportation system.

New policy directions

In approving amendments to the *Canada Transportation Act* in 2007, Parliament modified the statement of national transportation policy to explicitly identify environmental and social outcomes as appropriate concerns for regulation and strategic public intervention. The statement further says that national transportation objectives are best served when "governments and the private sector work together for an integrated transportation system".

We welcome the challenge to work closely with travellers and stakeholders, and to once again respond to a changing transportation environment. Our commitment has always been to issue balanced and fair decisions as an independent, quasi-judicial tribunal, consistent with Agency precedents and respecting the decisions of the superior courts.

Regulatory reforms

We also recognize that the path of regulatory reform and improved effectiveness lies in communication and education, and voluntary and co-operative solutions.

We see a duty to offer transportation stakeholders and the travelling public a range of informal to formal processes for resolving transportation concerns, complaints, barriers and major disputes.

We offer approaches that can often deliver faster, less expensive and more effective results than formally adjudicated solutions.

As outlined in the following pages, these approaches may mean facilitating or mediating matters such as a traveller's complaint with an air carrier, or consulting widely on a Code of Practice for the design of terminals accessible to persons with disabilities.

We carry out our functions in the face of an expanding caseload and the challenge of using internal resources more effectively. In 2007 we recognized that the Agency was at a crossroads in its evolution. At a time when one third of our workforce is eligible to retire within three years, we have been given significant new responsibilities through amendments to legislation. Moreover, we are experiencing a complete turnover of Members, adjusting to a reduced budget allocation, and dealing with a number of complex and precedent-setting cases.

The management challenge

Our response is to focus on improving the management of our work and budget. To deliver more timely decisions, we are improving our caseload management and performance measurement and tracking systems. We are instituting forward-looking human resource plans to retain our expertise. By being more sensitive to the needs of those we serve, we are improving our communications and introducing new ways to engage our stakeholders. We are doing all these things within the first-ever multi-year Strategic Plan for the Agency.

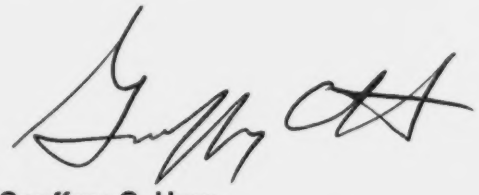
Over the past year the Agency has undertaken an extensive internal review process that will culminate in the development of an organizational renewal strategy – the most prominent feature being the implementation of a new organizational structure effective April 1, 2008. This will mark the first significant change to the Agency's branches and directorates in 15 years.

Two new Agency branches will be created to reflect a redefinition of our primary business functions, namely Dispute Resolution and Industry Regulation and Determinations. The Agency's long-established, specialized modal expertise previously housed in the old Air and Accessible and Rail and Marine branches are maintained in each of the two new branches.

This new structure will enhance the efficiency of the organization and provide greater flexibility to respond to changes and reallocate our resources where they are most needed. We are very proud of our expertise in transportation and our long-standing reputation for being fair, transparent and responsive to all of our stakeholders. The organizational renewal agenda we are implementing is designed to continue and build upon this tradition of excellence.

To ensure clarity on Agency activities and performance, this and future year annual reports will be based on a fiscal year basis, bringing consistency to all of our required annual reporting. Not only will this allow the Agency to better report to Canadians, it also provides the opportunity to streamline our resources for more effective reporting. As part of this transition, this year's Annual Report provides statistics for fiscal year 2007-08, as well as for calendar year 2007 for comparative purposes, along with highlights of its significant decisions since January 1, 2007.

I would like to take this opportunity to thank retiring members Mary-Jane Bennett, Guy Delisle, Baljinder Gill, George Proud and Beaton Tulk for their support, wise counsel and dedicated service to the Agency over their terms of service. I want particularly to express my profound appreciation to my colleague Gilles Dufault for his outstanding service since 1998, as Member and later Vice-Chair and Interim Chair.



Geoffrey C. Hare
Chair and Chief Executive Officer

HIGHLIGHTS

Covering the 2007-08 fiscal year ending March 31, 2008, while still providing comparative 2007 calendar year statistics, this year's Annual Report bridges the transition for the Agency to report on a fiscal year basis. This will enable the Agency to provide all of its reporting on the same basis. The narrative text also ensures that all significant case work undertaken since January 1, 2007 is clearly highlighted.

As a decision-making authority, the Agency:

Issued

2,568	Rulings between April 1, 2007 and March 31, 2008, including
640	Decisions
433	Orders
1,255	Permits
34	Final Letter Decisions and
206	Interim Decisions

Among them:

- Ordered Air Canada, Air Canada Jazz and WestJet to adopt a one-person-one-fare policy for domestic travel of persons who are required by carrier tariffs to be accompanied by an attendant for personal care or safety, or who require additional seating for themselves, including those severely disabled by obesity.
- Determined that the Canadian Pacific Railway Company (CPR) exceeded its revenue cap for the movement of Western grain in 2006-07 by $3,760,353, while the Canadian National Railway Company (CN) was $2,105,869 below its cap.
- Determined the final adjusted volume-related composite price index for railway revenue caps for the movement of Western grain at 1.0639 for 2007-2008. The adjusted index was the result of a once-only adjustment in line with the railways' actual costs of maintaining hopper cars.

To resolve transportation complaints and disputes:

Air Travel Complaints Program

683	complaints closed after investigation
64.5%	of complainants were fully or partially satisfied with the results obtained on their behalf

Mediation

19	disputes resolved
83%	success rate

- The Agency launched a consultation on draft guidelines to be used as part of the Agency's new authority to resolve complaints about railway noise and vibration.

To improve organizational performance, the Agency:

- Developed an organizational renewal strategy involving a major restructuring of the organization and reforms to better manage its workload and improve services.
- Committed to a Performance Measurement Framework establishing multi-year targets for service delivery standards and improvements.

To improve access for persons with disabilities, the Agency:

- Released a Code of Practice providing guidance for the design and operation of air, train and ferry terminals.

The mediator opens lines of communication and keeps the discussion focused on the interests of each party and on achieving a mutually beneficial result.

AGENCY MEMBERS and the CEO

New Appointments

Geoffrey C. Hare, Chair and Chief Executive Officer

Became Member and Chair, February 12, 2007.

Career public servant with the Government of Ontario; executive responsibilities for economic policy, investment, infrastructure and industry support programs; first Deputy Minister of the Ministry of Public Infrastructure Renewal.

John Scott, Vice-Chair

Became Member on June 1, 2007 and Vice-Chair on January 19, 2008.

Private sector lawyer specializing in corporate and commercial law.
Recognized for long history of community service.

Raymon J. Kaduck, Member

Became Member on January 8, 2007.

Air transportation economist, former Assistant Director – Aviation Programs, Government of the Northwest Territories, journalist and consumer advocate.

J. Mark MacKeigan, Member

Became Member on June 18, 2007.

Public and private sector lawyer; former senior legal counsel on competition law, cargo services, aviation regulatory and public international law matters.

Terms Completed

Gilles Dufault

Member since January 19, 1998. Appointed Vice-Chair on July 27, 2000 and was Acting Chair from July 1, 2006 to February 11, 2007.

Beaton Tulk

Member since December 16, 2002.

Guy Delisle

Member since January 8, 2002.

Baljinder S. Gill

Member since April 26, 2004.

Mary-Jane Bennett

Member since January 19, 2001.

George Proud

Member since January 8, 2001.

ABOUT US

OUR mandate

To administer the economic regulatory provisions of Acts of Parliament affecting all modes of transport under federal jurisdiction.

OUR mission

To assist in achieving a competitive, efficient and accessible transportation system through dispute resolution, essential economic regulation and communication in a fair, transparent and timely manner.

OUR vision

To be a respected, leading tribunal contributing to a competitive and accessible national transportation system efficiently meeting the needs of users and service providers and the Canadian economy.

OUR values

Integrity	⇨	We act with honesty, fairness and transparency.
People	⇨	**We treat people with fairness, courtesy and respect, and foster a co-operative, rewarding working environment.**
Quality Service	⇨	We provide the highest quality services through expertise, professionalism and responsiveness.
Communication	⇨	**We promote the constructive and timely exchange of views and information.**
Innovation	⇨	We commit to creative thinking as the driving force to achieve continuous improvement.
Accountability	⇨	**We take full responsibility for our obligations and commitments.**

OUR STRATEGIC priorities

To continue to be a leading Canadian tribunal by:

1. providing effective dispute resolution and economic regulation;
2. focussing on our people as our greatest asset;
3. enhancing internal and external relations through clear and timely communications;
4. supporting a more accessible transportation network without undue obstacles to the mobility of persons; and
5. ensuring organizational support and responsiveness through superior business management practices.

These five priorities contribute directly to the Agency's mandate.

We are committed to reaching out to our stakeholders and the public as a transparent, communicating organization. We seek the constructive and timely exchange of views and information.

In its role as a quasi-judicial tribunal with court-like powers, the Canadian Transportation Agency ensures processes that are responsive, fair, and transparent, and considers the interests of all parties in the national transportation system.

The essential tasks of the Agency are:

Dispute resolution	⇨	resolve complaints about transportation rates, services, fees, charges and other matters as a dispute resolution authority,
Economic regulation	⇨	make decisions on matters involving federally regulated air, rail and marine transportation, and
Accessibility	⇨	ensure access to Canada's transportation services.

In exercising its mandate, the Agency administers laws and regulations, as well as undertakes education and outreach initiatives and facilitates the development of voluntary codes of practice.

The Agency licenses rail and air carriers, and has the authority to regulate, when required, in the rail, air and marine modes. It is the aeronautical authority for Canada on matters related to the economic regulation of air carriers.

Its accessibility challenge is to remove undue obstacles to the mobility of persons with disabilities who use the federal transportation network, including inter-provincial bus services.

Most of the Agency's activities and workload are generated by demand from users and operators of the federal transportation system. The tribunal's quasi-judicial Decisions are rendered by Agency Members, who are appointed by the Governor in Council. They include the Chair, who acts as the Chief Executive Officer, and the Vice-Chair, who are both Members of the Executive Committee.

With the Royal Assent of Bill C-11 in June 2007, the number of Members was reduced from seven to five, all of whom are required to reside in the National Capital Region.

The Agency's decision-making process is governed by the rules of natural justice and fairness.

It applies the legislation, regulations and legal principles to ensure that all parties to a complaint or an application are dealt with fairly and equitably. Members and staff maintain a high level of expertise in the transportation field and keep informed of the changes in the industry and its players.

A mandate **STRENGTHENED** and **EXPANDED**

The *Canada Transportation Act* is the Agency's enabling statute to implement the federal government's transportation policy. The Agency also shares responsibility for administering other Acts and their related regulations, including the *Canada Marine Act*, the *Pilotage Act*, the *Coasting Trade Act*, and the *Railway Safety Act*.

Bill C-11, an Act to amend the *Canada Transportation Act* and the *Railway Safety Act* and to make consequential amendments to other Acts, received Royal Assent in June 2007. Amendments focus on balancing the interests of communities, consumers and urban transit authorities with those of air carriers and railways.

Highlights of Bill C-11:

General

- Strengthens the Agency's authority to mediate disputes as an alternative to its formal process if the parties in dispute agree.
- Authorizes the Minister of Transport to direct the Agency to examine and report on issues of public interest in certain mergers and acquisitions relating to all national transportation.

Rail

- Gives the Agency authority to resolve noise and vibration complaints caused by the construction or operation of railways and public passenger rail services.
- Provides that the Minister of Transport may request the Agency to adjust, once only, the volume-related composite price index to reflect the costs incurred by CN & CPR for maintenance of hopper cars used for the movement of Western grain.
- Expands the Agency's role to decide on matters such as compensation for the use of facilities and services when public passenger rail operators cannot negotiate a commercial agreement with a railway.
- Expands provisions on railway line transfers and discontinuances of rail corridors in urban areas that could be used for urban transit purposes. Governments and urban transit authorities can also now apply to the Agency for a net salvage value determination prior to accepting the railway company's offer to acquire a railway line.

Bill C-11 amended legislative provisions under which the Agency may mediate, investigate, regulate or decide on matters as varied as air travel complaints and railway noise.

Air

- Integrates the Air Travel Complaints Program into the operations of the Agency, including the requirement to report on the number and nature of complaints received, the names of carriers and any systemic trends observed.
- Once in force, provides for the development of regulations by the Agency to ensure airline advertising practices are sufficiently transparent, allowing consumers to identify the true cost of flights within or originating in Canada.
- Requires domestic air carriers to post their terms and conditions of carriage on any Web site selling their domestic services.
- Enables the Agency to make regulations requiring a licensee or carrier to display terms and conditions of carriage of its international air services on its Web site if used for selling these services.
- Authorizes the Agency to make regulatory changes to direct international carriers that are not licensees to pay out-of-pocket expenses when they have failed to apply their tariff.
- Requires domestic air carriers to post signs prominently at their business offices advising passengers that their tariff, including the terms and conditions of carriage, is available for public inspection.

In February 2008, Bill C-8, an Act to amend the *Canada Transportation Act* (railway transportation), received Royal Assent.

Highlights of Bill C-8:

- Expands final offer arbitration to groups of shippers on matters common to all shippers and relating to rates or conditions for the movement of goods, when the shippers make a joint offer.
- Removes a requirement that the Agency be satisfied that a shipper would suffer substantial commercial harm before imposing a remedy for disputes relating to level of service, inter-switching rates and competitive line rates.
- Increases the notice period for rate increases by railway companies for the movement of traffic to 30 days from 20.
- Upon a shipper's complaint, permits the Agency to investigate certain charges and conditions for the movement of traffic or provision of incidental services that may apply to more than one shipper, and make changes if they are found to be unreasonable.
- Allows for suspension of any final offer arbitration process if both parties consent to pursue mediation.

THE AGENCY ADMINISTERS LAWS AND REGULATIONS, UNDERTAKES EDUCATION AND OUTREACH INITIATIVES AND FACILITATES THE DEVELOPMENT OF VOLUNTARY CODES OF PRACTICE.

An **ORGANIZATIONAL** renewal strategy

In 2007, the Agency began a process of organizational renewal to meet workload and resource challenges.

The challenges include retirement of a third of its workforce within three years, growing demands, more complex cases, an enhanced mediation mandate and new legislative responsibilities, including rail noise and vibration.

As part of a renewal process to meet these challenges head on, the Agency implemented a hybrid organizational structure on April 1, 2008, integrating a modal approach within a functional business delivery model.

The new primary operational business lines are **Dispute Resolution** and **Industry Regulation and Determinations**, reflecting the Agency's primary regulatory and dispute resolution functions.

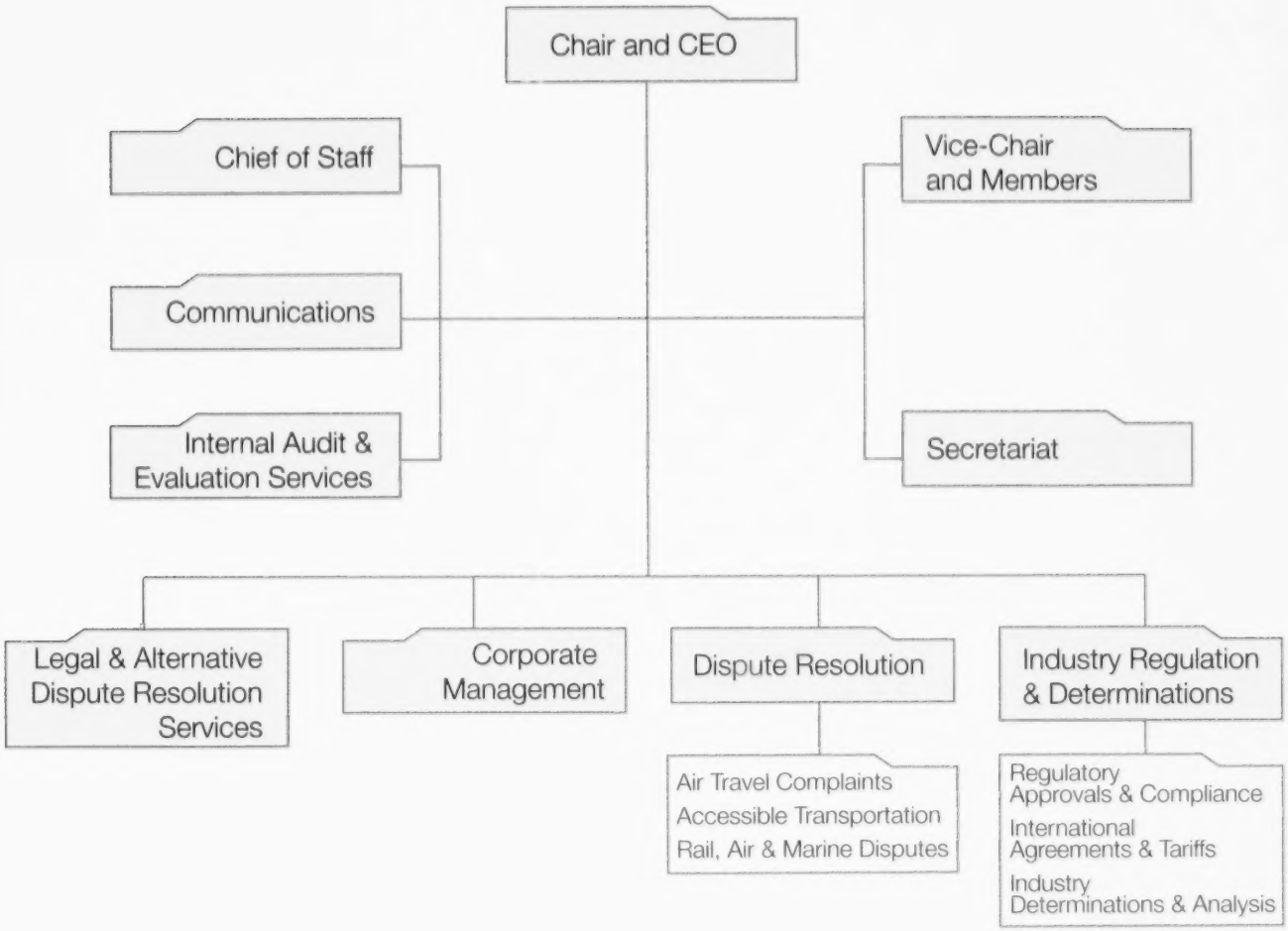
The new organizational structure is only one component of the overall renewal strategy. Other policies and processes are also being developed to support the Agency's organizational renewal, such as succession planning, a performance measurement framework, a revised learning policy, a case management toolkit and a multi-year strategic plan.

As well as addressing key challenges, the organizational renewal process aims to improve the Agency's service delivery by enhancing its ability to respond to increasingly complex cases and changing caseload demands in a more efficient and timely manner. The changes provide more flexibility and open up greater learning and development opportunities for employees.

Above all, the organizational renewal process is meant to build on the Agency's longstanding reputation as an expert tribunal that is recognized as being fair, transparent and responsive to all of its clients and stakeholders.

We want to ensure that clients and stakeholders are familiar with our services and processes, and to offer dispute resolution services in the most effective way possible.

Organizational Structure



Further information about the role and structure of the Agency can be found on the Agency's Web site at www.cta.gc.ca.

RESOLVING transportation **DISPUTES**

RESOLVING transportation **DISPUTES**

As a public sector organization with regulatory powers to impose solutions, the Agency recognizes the value of looking first to informal solutions.

The Agency acts early to define issues, identify the interests involved, and bring parties to disputes together. Through collaborative mechanisms, it is achieving results faster and more effectively, at less cost, and with greater satisfaction and commitment to solutions.

Within its mandate to resolve transportation disputes and act as an economic regulator, the Canadian Transportation Agency operates across a spectrum from informal to formal processes.

Process Spectrum

Facilitation	Mediation	Arbitration	Adjudication
←			→
Informal process		**Formal process**	
voluntary		mandatory	
collaborative		adversarial	
less expensive		more expensive	
potentially faster		potentially slower	
potential win-win		potential win-lose	
relationships central		relationships peripheral	

The Agency has a mandate and the expertise to resolve disputes about transportation services, rates, fees and charges, terms and conditions of carriage, accessibility and other matters. Since complaints drive many of the Agency's processes, it has developed methods to respond quickly, effectively and fairly to complaints.

ANTICIPATING and **ELIMINATING** problems of access

Where possible, the Agency encourages voluntary and informal processes between parties. In the first instance, an individual or party is expected to bring a concern to the transportation operator. If a direct approach is unsuccessful, the Agency may recommend other steps:

- Agency personnel are often able to work out solutions quickly through *facilitation*, in consultation with complainants and transportation service providers.
- The Agency also offers confidential *mediation* as another less resource-intensive alternative to formal processes.
- For selected business-related rail matters, upon request of all parties involved, the Agency may also offer *arbitration* services. In these cases, the arbitrator will consider information provided by the parties and make a binding decision. All costs for this process are paid by the parties involved.
- As a quasi-judicial tribunal, the Agency operates like a court and has the authority to issue decisions and orders on matters within its jurisdiction through *formal adjudication*.
- It acts on a case-by-case basis to resolve individual complaints and on a systemic basis by developing regulations, codes of practice and standards and through programs of outreach and education.

Dispute resolution is often seen as a mechanism for redress after events occur and the problem has been experienced. The Agency's approach however has evolved into a set of mechanisms to anticipate and where possible eliminate problems. This is particularly the case for accessibility to transportation services. Agency response to pre-travel enquiries provides a real-time response to address travel problems before they occur.

Through informal discussion and outreach, the Agency seeks to educate industry about the rights of persons with disabilities to equitable access and industry's obligations to make transportation services accessible.

While the Agency acts on a case-by-case basis to resolve individual complaints, it deals with issues of mobility on a systemic basis by developing regulations, codes of practice and standards, and through outreach and education.

Emphasizing collaboration, consensus and compromise, the codes of practice avoid rigid descriptions in favour of practical, functional and operation-oriented solutions. Their success is based on development through consultation with service providers, the Agency's Accessibility Advisory Committee, as well as individuals and organizations with a demonstrated interest in accessible transportation.

Today, there are five voluntary codes of practice in place:

- Aircraft Accessibility for Persons with Disabilities (Air Code);
- Passenger Rail Car Accessibility and Terms and Conditions of Carriage by Rail of Persons with Disabilities (Rail Code);
- Ferry Accessibility for Persons with Disabilities (Ferry Code);
- Removing Communication Barriers for Travellers with Disabilities (Communication Code); and
- Passenger Terminal Accessibility (Terminal Code).

The Terminal Code was unveiled in Montréal in June 2007 at the 11th International Conference on Mobility and Transport for Elderly and Disabled Persons, where, as a major conference sponsor, the Agency also presented two technical papers.

"We prefer voluntary measures over prescriptive ones because we're already thinking about how to accommodate people with disabilities. Airports are built to accommodate all travellers. We've done it voluntarily because we see the need.

I think the Agency, in seeking the design (terminal) code, really broke new ground. It deserves a lot of credit for doing it."

—**Jim Facette**, President,
Canadian Airports Council

It covers a broad range of terminals from small ferry terminals in Atlantic Canada, to rural and urban train stations of varying sizes and Canada's airports within the National Airports System. In addition to providing the technical specifications for the physical aspects of terminals, the Code covers other issues such as ground transportation, boarding devices, escort passes, passenger assistance and facility and service awareness programs.

An accompanying Guide helps terminal operators implement Code provisions, by providing resources and tips regarding matters such as:

- compliance with the Canadian Standards Association's Accessible Design for the Built Environment;
- incorporating way-finding methods such as colour contrasting and tactile markings within terminals;
- drop-off and pick-up areas at curbs near entrances and exits for passengers with disabilities;
- providing seating at regular intervals along terminal circulation paths; and
- providing relieving areas for service animals.

Kelowna: A model

The Kelowna International Airport is consulting a community-based advisory committee about the design of its facilities and its $36 million investment in expansion.

The current terminal provides wheelchair accessibility in all washrooms, braille on washroom signage, convenient parking stalls, loading and unloading space in front of the terminal, reserved seating inside for travellers with disabilities, and loading bridges on almost all daily flights.

"You may be assured that we take our responsibilities to provide facilities for persons with disabilities very seriously."

—**Roger Sellick**, General Manager, Kelowna International Airport

Agency codes of practice avoid rigid descriptions in favour of practical, functional and operation-oriented solutions.

FACILITATION: Finding informal solutions

Client Satisfaction

In 2007-08, Agency staff closed 683 air travel complaints after investigation, compared with 819 in 2006-07 and 561 in 2005-06.

In 64.5% of the 2007-08 cases, complainants advised they were either fully or partially satisfied with the results obtained on their behalf.

This compares with satisfaction rates of 72.2% in 2006-07 and 69.1% in 2005-06.

Agency staff use informal facilitation to resolve issues affecting air, rail and marine transportation and accessibility of transportation services.

With their extensive knowledge of the transportation industry, issues and stakeholders, staff typically find solutions through direct communications with users and service providers.

Facilitating access to transportation services

Staff take early action to avert or alleviate situations that might have caused obstacles to the mobility of persons with disabilities or to remedy situations.

In some cases, applicants were satisfied that their access issues had been fully addressed and remedied by transportation service providers, and withdrew their complaints from the Agency.

Air Travel Complaints Program

The Air Travel Complaints Program specifically seeks solutions to the problems travellers experience with air carriers operating publicly-available services within or to and from Canada.

A dissatisfied traveller is expected to first bring a complaint directly to the carrier. If the carrier fails to respond within a reasonable time, or the traveller is dissatisfied with the carrier's response, the Agency will accept a request to investigate the complaint further.

Complaints are assessed against tariffs — the published terms and conditions of the carriers' services, including all fares, rates and charges — as well as Canadian law and international conventions. Where it appears that the carrier's obligations have not been respected, complaints staff will approach the carrier, and informally attempt to facilitate a resolution of the complaint consistent with these obligations.

The Agency does not have jurisdiction over issues related to safety, which are referred to Transport Canada.

ATTENDANT REQUIRED?

A woman was advised by an air carrier that her son, who is deaf and visually impaired, would require an attendant for his return flight from Newfoundland to Toronto, although the carrier had permitted him to travel alone on the flight to Newfoundland. Dialogue by Agency staff with the airline resulted in a satisfactory arrangement for the son to return to Toronto as scheduled.

The Agency also does not have the mandate to deal with complaints involving the quality of air carrier services such as the attitude of airline staff. Such issues fall solely within the purview of airline management. The Agency is, however, required to report on the number and nature of all complaints received through its Air Travel Complaints Program.

The volume of complaints received has not varied significantly from year to year, although the travellers' experience and the nature of their complaints change to some degree as air travel evolves.

UPGRADE CHARGES

A carrier was unable to provide alternate transportation to a traveller until two days after his flight was cancelled. He was able to find a business class seat the next day at a cost of $1,081. His attempts to obtain a refund from the carrier were unsuccessful and he asked the Agency to intervene for help. After being referred by Agency staff to the provisions of its tariff, the carrier agreed to refund the full cost of the upgrade.

During 2007-08, the Agency investigated 831 complaints compared with 1,025 in 2006-07. The drop in volume was due to a successful initiative designed to reduce the number of active complaints carried forward into the new year.

In 2007-08, the Agency received 954 new air travel complaints compared with 1,072 in 2006-07.

- 429 not previously taken up with carriers were referred for resolution between complainants and carriers;
- 525 complaints were received from individuals who had already approached carriers directly and were dissatisfied with their responses.

A further 100 complaints were brought back to the Agency by dissatisfied complainants after having been referred to the carriers for resolution.

Canadian air carriers

412 complaints were received concerning some 12 different Canadian carriers, ranging from large companies such as Air Canada and WestJet, to smaller ones such as Canadian North Inc. and Arctic Sunwest Charters. The year's total compares with 432 in 2006-07 and 506 in 2005-06.

Fewer complaints were registered in 2007-08 against Air Canada and Skyservice than a year earlier, and more against Air Transat and Sunwing.

Foreign air carriers

The year was marked by a drop in complaints against United States carriers to 29 from 38 in 2006-07 and a slight increase in complaints against carriers from countries of the European Union to 112 from 110. Improved records of Air France and Alitalia were notable exceptions. In its first year of operation, UK-based Globespan was the source of 21 complaints.

Categories of complaints

While not within the Agency's mandate, quality-of-service issues remain the most frequent concerns of air travellers. Out of the various categories, complaints cited quality of service issues 1,030 times, 470 for baggage and 440 for flight disruptions. The delayed delivery or loss of luggage, damage to luggage, and dissatisfaction over compensation, have come to equal flight disruptions as the main travel concerns. These issues are evident in passenger experience with both Canadian and foreign carriers.

As the year concluded, the Agency was also monitoring air travel complaints to determine whether systemic trends were developing in relation to:

- carriers' failure to call for volunteers to accept alternate travel arrangements when flights are oversold and at what point in the boarding process such requests are made;
- carriers' premature refusal to transport due to passengers' unruly behaviour; and
- carriers' responsibility to provide adequate supervision for unaccompanied minors. Ten such complaints were received in 2007-08 compared to seven in 2006-07 and seven in 2005-06.

Detailed statistics for the Air Travel Complaints Program are set out in Appendix C.

The delayed delivery or loss of luggage, damage to luggage, and dissatisfaction over compensation, have come to equal flight disruptions as the main travel concerns.

MEDIATION: Bringing the parties together

Parties in a dispute may ask to have an issue settled by mediation. If an individual request is made, the Agency contacts the other party to determine whether it is willing to participate in mediation.

The Agency offers complete mediation services as a voluntary, confidential, informal and collaborative process. Following a successful pilot program, the Agency's mediation process was entrenched in amendments to the *Canada Transportation Act* passed in 2007.

Agency mediation is becoming better known as a service that can be made available quickly, with a statutory deadline of 30 days for completion, compared with 120 days for the Agency's formal adjudication process.

Mediation of rail matters in particular was chosen by a growing number of parties in 2007-08.

With the aid of an Agency mediator, parties jointly make decisions about ways to address issues in dispute, so that they can negotiate settlements that work for everyone. Mediation can be a flexible, fast, and inexpensive tool to resolve disputes.

Mediation

The Agency received 46 new requests for mediation in 2007-08, compared with 23 in 2006-07, and settled 19 through its mediation services.

Eighteen requests were carried over into 2007-08, bringing to 64 the number dealt with during the fiscal year.

Of the 64 requests:

- 46 were closed;
- 18 were pending at year-end.

Of the 46 cases closed:

- 33 related to rail transportation, including 12 about noise, 8 rail infrastructure, and 6 level of service;
- 10 related to accessible transportation;
- 2 related to air;
- 1 related to marine transportation.

Since the parties at mediation are there because they want to be part of a solution, the Agency's mediation process has an 83% success rate for resolving disputes amicably.

Once parties agree to be part of the process, one of the Agency's trained mediators starts to work with them in an informal setting. The mediator helps them jointly address all of the issues and negotiate a settlement. Most importantly, the mediator opens lines of communication and keeps the discussion focused on the interests of each party and on achieving a mutually beneficial result.

In this setting, it is the parties themselves who reach agreement. The process can be quick — from a few hours to a couple of days — but in any event must be completed within 30 days unless extended with the agreement of the parties. Anything discussed during the mediation and any documents produced remain confidential unless otherwise agreed.

Parties have the flexibility to develop solutions that might not have been available under more formal processes. For instance, under a formal process the Agency or the Courts might be bound by the law to apply certain remedies that may not be the best for a particular situation.

FINAL OFFER ARBITRATION: Business-related rail matters

Since January 1, 2007, the Agency referred three cases to an independent arbitrator for settlement at the request of shippers and rail carriers who were unable to resolve rate disputes on their own. Two of these cases were resolved by the parties prior to the arbitrator rendering a decision and one was dismissed by the Agency.

As applications for final offer arbitration are confidential, no details of the parties involved may be revealed unless all parties agree.

ADJUDICATING transportation **DISPUTES**

As a tribunal, the Agency may issue decisions and orders through formal adjudication. When a case is filed with the Agency, a panel of at least two tribunal Members is appointed to consider it. Parties file submissions and Agency staff provide research and analysis for review by panel Members, who render a binding decision. Public hearings may be held, usually for more complex cases.

In exercising its quasi-judicial powers, the Agency strives to provide the highest level of expertise and to reach decisions through an impartial, transparent and fair process, balancing the interests of consumers and industry.

In 2007-08, the Agency closed 145 cases resolving disputes involving transportation service providers, consumers, and other stakeholders through this court-like, formal adjudication process.

The following pages provide highlights of Agency Decisions as a result of formal adjudication. Further information can be found on the Agency's Web site at www.cta.gc.ca.

Accessibility Disputes

For issues related to the accessibility of transportation services, the adjudication process is engaged when an applicant perceives that there has been an undue obstacle to the mobility of a person with a disability. In such cases, the Agency determines whether:

- the person has a disability for the purposes of the *Canada Transportation Act*;
- there was an obstacle, that is, an impediment to the mobility of the person; and
- the obstacle was undue, that is, the transportation service provider has not demonstrated that it provided reasonable accommodation to persons with disabilities.

The Agency has broad powers to impose corrective actions when it finds there is an undue obstacle to the mobility of persons with disabilities within the federal transportation network. Measures include purchasing or modifying equipment, changing or developing a policy or procedure, and enhancing a training program.

The Agency has broad powers to impose corrective actions when it finds there is an undue obstacle to the mobility of persons with disabilities within the federal transportation network.

In 2007-08,

62 new applications were received related to the mobility of persons with disabilities;
67 cases were carried over from previous years;
28 were resolved through facilitation;
8 were resoved through mediation;
10 were closed;
11 were withdrawn;
62 were carried over to be dealt with in 2008-09.
Of these cases:
- 6 were on hold pending the one-person-one-fare Decision; and
- 26 related to medical oxygen issues where a Decision is pending.

The Agency issued 10 rulings as a result of the formal adjudication process, ordering corrective actions for the removal of undue obstacles to the mobility of persons with disabilities. In addition, nine decisions were issued in which the Agency determined whether measures ordered in previous decisions had been implemented.

VIA Rail's Renaissance cars

Two Decisions by the Agency in 2003 ordering VIA Rail to improve the accessibility of its new Renaissance cars were appealed to the Federal Court of Appeal, and then to the Supreme Court of Canada which ruled on March 23, 2007.

The judgment restored the Agency's preliminary and final decisions in this case, thereby requiring VIA to implement corrective measures for 14 undue obstacles to the mobility of persons with disabilities related to its Renaissance cars.

Undue obstacles cited included inadequate width of doors and aisles, lack of space for wheelchairs, and lack of appropriate seating for attendants and persons who travel with service animals.

Subsequent to the Supreme Court ruling, the Agency issued an order for compliance and staff followed up with VIA on implementation of corrective measures. VIA has committed to fully comply with the Agency's Order and has submitted a design plan for modifications for the Agency's review.

The Supreme Court judgment also has broad implications for the Agency in its consideration and processing of accessibility-related complaints.

Applicants must establish that there is an obstacle to the mobility of a person with a disability in the federal transportation network. The onus of proof then shifts to the transportation service provider to prove that the obstacle is not undue. The service provider must show that reasonable accommodation has been provided up to the point of undue hardship.

In most cases, there will be a range of alternatives available to address the needs of a person or a group with a disability. In the end, reasonable accommodation will be the most appropriate accommodation which would not cause undue hardship to the service provider.

In light of this new undue hardship test, respondents to complaints in process at the time of the Supreme Court judgment are being provided with a further opportunity to file submissions. Wording in all Agency Decisions sets out this new approach.

For new complaints, the Agency initiated work to promote understanding of:

- the test the applicant must meet to establish that an obstacle was encountered, failing which the Agency would dismiss the complaint, and
- the new undue hardship test, the elements of this test, and the burden of proof as this applies to respondent service providers.

One-person-one-fare Decision

After extensive written pleadings and evidence, and two hearings, the Agency issued a Decision expected to affect some 80,000 persons with disabilities.

In January 2008, the Agency ordered Air Canada, Air Canada Jazz and WestJet to adopt a one-person-one-fare policy for persons with severe disabilities on flights within Canada. The airlines were given up to one year to implement the policy, which does not apply to domestic segments of transborder and international trips.

The Decision means that, for domestic services, these carriers may not charge more than one fare for persons with disabilities who:

- are accompanied by an attendant for their personal care or safety in flight, as required by the carriers' domestic tariffs; or
- require additional seating for themselves, including those determined to be functionally disabled by obesity.

As well, the Agency ordered the Gander International Airport Authority, also a respondent in the case, not to charge its improvement fee for attendants of persons with disabilities.

The one-person-one-fare policy is based on longstanding principles of equal access to transportation services for persons with disabilities [...]

The Agency offered to facilitate a collaborative process to develop a common screening process for implementation of the one-person-one-fare policy.

The Decision does not apply to:

- persons with disabilities or others who prefer to travel with a companion for personal reasons;
- persons with disabilities who require a personal care attendant at destination, but not in-flight; and
- persons who are obese but not disabled as a result of their obesity.

This one-person-one-fare policy is based on longstanding principles of equal access to transportation services for persons with disabilities, regardless of the nature of the disability, and the Agency's legislative mandate to remove "undue obstacles" to their mobility.

It also respects related decisions of the Supreme Court of Canada and Federal Court of Appeal.

- The Supreme Court confirmed, in *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, that the Agency must apply human rights legislation in identifying undue obstacles to the mobility of persons with disabilities.
- The Supreme Court also ruled, in *Tranchemontagne v. Ontario (Director, Disability Support Program)*, that there should be no discrimination between persons with disabilities in terms of benefits regardless of the underlying reason for their disability.
- The Federal Court of Appeal Decision, in *Linda McKay-Panos v. Air Canada*, confirmed that a person who is obese may be disabled for purposes of air travel if unable to fit in an airline seat.

The airlines are required within 12 months of the Decision to develop a screening process to assess eligibility under the policy.

In a separate statement supplementing the Decision, the Agency offered to facilitate a collaborative process to develop a common screening process for implementation of the one-person-one-fare policy. Such a co-operative approach to work out common terms of compliance would potentially benefit Air Canada, Air Canada Jazz, WestJet and the Gander International Airport Authority, as well as other Canadian air carriers and airport authorities that may consider voluntary implementation of the policy.

In February 2008, the air carriers sought leave to appeal this Decision to the Federal Court of Appeal.

Calling out bus stops

The Agency issued two Decisions about the failure of drivers of OC Transpo, which provides bus service to both Ottawa and Gatineau, to call out stops for persons with visual impairments. Corrective measures ordered by the Agency included:

- modifying OC Transpo's policy and driver handbook to ensure the consistent calling out, or announcement on a public address system where available, of major and requested stops;
- ensuring that the Global Positioning System is always activated once installed; and
- incorporating situations dealing with difficulties experienced by persons with visual impairments into its training program.

OC Transpo confirmed that it has implemented most of the corrective measures and will implement, within a reasonable timeframe, its plan for ensuring compliance and monitoring of its policy. The Agency is, therefore, satisfied that OC Transpo has adequately addressed the corrective measures.

Use of medical oxygen

The Agency concluded oral hearings in the fall of 2007 to gather further information on the provision of medical oxygen on board aircraft in the context of 25 complaints against Air Canada and one against WestJet.

In a December 2005 Decision, the Agency found various obstacles in the carriers' services to the mobility of persons with disabilities who require oxygen. The hearings were held to determine whether or not the obstacles were undue, and if so, the corrective measures appropriate to address them. A Decision is expected in 2008.

Allergies

As the fiscal year closed, the Agency was pursuing its investigation of three complaints against Air Canada involving allergies to flowers, peanuts and nuts. Pending this ruling, three other cases involving chemicals and scented products, cashews and peanuts, were stayed.

The cases raise issues pertaining to whether the applicants are persons with disabilities by virtue of allergies for the purposes of Part V of the *Canada Transportation Act*.

The Agency is gathering expert evidence on pet allergies and multiple chemical sensitivities, a condition closely related to allergies, in order to inform the Agency's investigation of complaints regarding these matters. If the allergy is determined to be a disability in any of these cases, the Agency will then decide whether Air Canada's policies on allergens pose an obstacle to mobility and if so, whether the obstacles are undue.

The Agency found various obstacles in the carriers' services to the mobility of persons with disabilities who require oxygen.

Air Disputes

Carrier tariffs set out the terms and conditions of carriage and all their fares, rates and charges. They constitute the contract of carriage between the passenger and the carrier, and they must be applied as written. The Agency will accept and investigate complaints when persons or other carriers believe that a carrier has failed to apply its tariff, or provisions of the tariff are deemed to be unreasonable or unduly discriminatory.

Checking in on time

The Agency has repeatedly reminded air travellers that they have an obligation to arrive at the airport in sufficient time to check in, clear security and reach the departure gate.

In 2007-08, the Agency completed 32 investigations after receiving complaints related to the terms and conditions of carriage.

Of these, 23 related to allegations that a carrier had failed to respect its tariff and nine where the provisions of the tariff were unreasonable.

Check-in closed

Passengers travelling within Canada on Air Canada are required to check in at least 30 minutes before the scheduled departure of their flight. Otherwise, the airline may reassign their seat or cancel their reservation. The check-in function is automatically closed 30 minutes before flight time.

When a man arrived at the counter for his 7:55 p.m. flight from Montréal to Vancouver, he was advised that the check-in had closed. After speaking with a supervisor, Air Canada arranged for him to fly to Vancouver via Toronto on another flight, and charged him a $150 re-booking fee.

In a complaint to the Agency, the man cited the statement of a friend that they arrived together at the airport at about 7 p.m. and claimed he arrived at the counter no later than 7:20 p.m. He said the airline may have closed check-in early in order to assign his seat to a standby passenger.

SERVICE CHARGE DISALLOWED

The Agency disallowed a proposal by KLM and Northwest Airlines to implement a $100 service charge for the refund of taxes paid on certain non-refundable tickets. The carriers argued that requests for refunds come mostly in bulk from agencies and it is a time-consuming process to decide whether they qualify for a refund. The Agency concluded bulk submissions for tax refunds are matters to be resolved between the carriers and their agents. Moreover, a service charge of $100 is often considerably higher than the value of taxes. The Agency ruled that persons who purchase non-refundable tickets and do not use them should be able to obtain a full refund of taxes paid if this is allowed by the taxing authority.

In its ruling, the Agency noted that a complainant must, on a preponderance of the evidence, establish that the air carrier has failed to apply, or inconsistently applied, terms and conditions of carriage appearing in its tariff.

The onus was on the complainant to prove that he presented himself on or before the check-in time limit. The Agency found that he had not substantiated his actual arrival time at the check-in counter.

Passenger bumped

A woman was refused transportation on Air Canada's Flight 157 from Toronto to Edmonton because it was oversold. In her complaint, the women said that although she had booked a ticket, she had been denied boarding because she had not pre-selected her seat.

Air Canada submitted it is common in the air transport industry to sell more tickets for a flight than available seats, a practice known as overbooking. Notice of its right to deny boarding appears on its Web site and on itinerary receipts issued to passengers.

The Agency found that there was no evidence that the complainant was denied boarding because she failed to pre-select a seat, but rather because of the order in which she presented herself for check-in.

However, its Decision noted that Air Canada's tariff provides that when a flight is oversold, volunteers from among confirmed passengers will be asked to relinquish their seats in exchange for compensation.

The Agency found no evidence of any such request for Flight 157, and ruled Air Canada contravened its tariff by not seeking volunteers. The Agency ordered Air Canada to ensure proper implementation of its denied boarding policy.

In the Agency's view, seeking volunteers before denying boarding involuntarily is a key element of a denied boarding policy.

ANIMALS AS CHECKED BAGGAGE

On July 11, the Agency announced that it had suspended an application filed by Air Canada to amend its transborder and international tariffs to discontinue the carriage of animals as checked baggage. Instead, pets would travel as cargo and not necessarily travel on the same flight as the passenger. The suspension was intended to provide greater certainty for the air travelling public pending a final determination on the matter which was still under investigation at the end of March 2008.

"The challenge is to carefully balance the concerns of communities with the need for a railway company to maintain efficient railway operations."

—Draft Guidelines for the Resolution of Complaints Over Railway Noise and Vibration

Rail Disputes

Consultation on railway noise and vibration

As part of changes to the *Canada Transportation Act* in 2007, the Agency was given authority to resolve complaints about noise and vibration from the construction or operation of railways under federal jurisdiction.

In October, the Agency launched a consultation on draft guidelines that it will use to help determine reasonable levels of railway noise and vibration, and to define the collaborative process for resolving complaints.

Two phenomena have brought about an increase in railway noise complaints:

- Potential noise from railway operations has not always been taken into account through environmental assessment processes for land-use planning and the approval of new residential developments. As a result, some residential areas have been built within the "noise shadow" of railway lines and yards.
- Railway activities have intensified as the demand for rail transportation has increased. In many railway yards, operations now take place 24 hours a day, seven days a week.

While the Agency has dealt with complaints about railway noise under previous legislation, the Federal Court of Appeal determined in 2000 that the Agency did not have jurisdiction under the *Canada Transportation Act*.

From that time until June 2007, Agency staff mediated numerous noise and vibration disputes between railway companies and communities. But the Agency could not rule on such issues and order railway companies to make changes to their railway construction and operations.

As part of the consultation with key stakeholders, the Agency proposed to determine reasonable levels of noise or vibration on a case-by-case basis, evaluating each situation on its own merits.

The draft guidelines listed elements to be considered, such as type and level of noise and vibration, proximity of residents and impact on them, possibilities of abatement or mitigation, and balance of community and railway needs.

The consultation period was extended from mid-December 2007 to the end of February 2008 at the request of interested parties, particularly the many organizations that needed to discuss the issue with their members to provide their complete input on the draft guidelines. The Agency expects to finalize the guidelines by the summer of 2008.

Serving captive shippers

The Agency issued one Decision in July 2007 and six other related Decisions in January 2008 in response to complaints that CN breached its level of service obligations for a number of grain handling companies in the transportation of Western grain.

The earlier Decision found that CN's restrictive distribution of rail cars rendered Great Northern Grain Terminals Ltd. (GNG) and other small companies uncompetitive. CN was ordered to:

- put in place a program whereby GNG can order blocks of 50 rail cars in advance;
- not prohibit or restrict GNG from trading cars;
- advise GNG of the methodology it uses in its determination of allocating rail cars; and
- implement the Agency's directions by the beginning of the 2007-2008 crop year, commencing August 1, 2007.

Interventions in support of GNG were filed by several companies including the Canadian Wheat Board, North East Terminals Ltd., Providence Grain Group Inc., Parrish and Heimbecker, North West Terminals Ltd., and Patterson Grain, all of which subsequently filed similar complaints against CN.

The Decision acknowledged that the systemic nature of CN's conduct has undoubtedly affected other grain shippers and expressed the need for a new and open dialogue between CN and its shippers, so that they are able to reasonably deal with car supply issues independent of regulatory intervention to the greatest possible extent.

In the Agency's January 2008 Decisions on the CARS group complaints, the Agency found that CN failed to meet its level of service obligations to the shippers for services provided for crop year 2006-2007.

The Agency also recognized that CN has revised its grain product programs for 2007-2008 in an effort to improve service levels and address shortfalls. The Agency voiced concerns over continuing service shortfalls but found that it had insufficient information to rule on crop year 2007-2008, and ordered CN and the six shippers to file service information for the period August 2007 to April 2008.

CN sought leave to appeal the January 2008 Decisions to the Federal Court of Appeal.

In its July 2007 Decision, the Agency encouraged CN to make information available to shippers through its Web site on its methodology for determining the allocation of rail cars.

The Agency completed ten reviews of existing Agency Orders and Decisions, primarily related to road crossings, where relevant facts or circumstances had changed.

Infrastructure and construction approvals

In 2007-08, the Agency processed 171 agreements filed by parties that had conducted their own negotiations related to railway crossings. These agreements became Orders of the Agency. Where no agreement could be reached, the Agency assisted parties involved in reaching a fair and equitable resolution.

In such cases, the Agency reached decisions on:

3 public road crossings of a railway,
2 private railway crossings, and
1 apportioning costs for a crossing warning system.

After assessing the environmental impact of projects under the *Canadian Environmental Assessment Act*, the Agency approved since January 1, 2007 the location of several new railway lines and the construction of railway crossings, allowing for:

- the Toyota Woodstock Spur (CPR) in Woodstock, ON;
- the Farewell CN Rail Spur (CN) in Oshawa, ON;
- road crossings in Longlaketon, SK; Burlington, ON; Delta, BC; and Innisfail, AB; and
- a utility crossing near Waneta, BC.

Transfer and discontinuance of railway lines

Greenstone, a community in northern Ontario, submitted a complaint that CN had indicated in a three-year plan that the 195.6 km Kinghorn Subdivision connecting Greenstone with Thunder Bay was being discontinued. However, in later offering the line for sale, CN had excluded an 8.1-mile section of track in the middle of the line.

In its Decision, the Agency ruled that, with the section excluded, CN would retain the only remaining customer on the line, making it difficult for any short-line railway to be viable. The Agency found that CN had failed to comply with the discontinuance process and that its actions went against the intent of the *Canada Transportation Act*. A key purpose of the process is to facilitate the sale or leasing of surplus railway lines to new operators, and to avoid service interruptions.

The steps outlined in the Act for the transfer or discontinuance of railway lines were established to allow parties to consider operating a short-line railway over the line. The steps also allow shippers on the line to make other arrangements in the event it is discontinued and to provide levels of government an opportunity to consider purchasing the line. As a result, the Agency ordered CN to restart the process or revert to its three-year plan.

The Decision was appealed to the Federal Court of Appeal.

The Agency also received notices of discontinuance of one railway line in Québec and seven in Saskatchewan.

During the year, the Agency addressed several requests for determinations of net salvage value of:

- the Kinghorn Subdivision in northern Ontario;
- a section of CSX Transportation Inc.'s Sarnia, ON, Subdivision;
- a section of CPR's Bromhead, SK, Subdivision;
- CPR's Radville, SK, Subdivision; and
- CN-CPR's CASO Subdivision in St. Thomas, ON.

Marine Disputes

Float planes and ferries

Float plane operators that were charged $1.50 for each passenger they carried into or out of the Port of Nanaimo, BC, complained to the Agency that the port authority charged their direct competitors and ferries much lower fees or none at all.

When the Agency ruled that all passengers should be treated the same, the Nanaimo Port Authority appealed the Decision to the Federal Court of Appeal. In its ruling on May 29, 2007, the court upheld the Agency's decision.

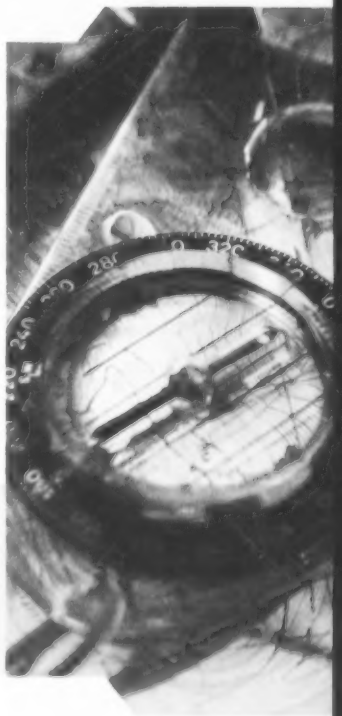
Pilotage services

On May 3, 2007, the Agency issued its ruling on the Laurentian Pilotage Authority tariff proposal that had been published on October 7, 2006. The Agency ruled that the proposed tariff increase was not prejudicial to the public interest.

In 2007-08, the four pilotage authorities published new tariff proposals.

No objections were filed against the proposals of the Great Lakes, Laurentian, or Pacific authorities.

After the Shipping Federation of Canada filed an objection to tariff increases sought by the Atlantic Pilotage Authority, the two parties agreed to resolve their dispute through Agency mediation. The dispute was settled before mediation took place, and the objection was withdrawn.



Under the *Pilotage Act*, a qualified Canadian marine pilot must be on board most ships to navigate into or out of major Canadian ports and along some designated Canadian waterways.

INDUSTRY REGULATION and **DETERMINATIONS**

INDUSTRY REGULATION and DETERMINATIONS

As an administrative tribunal, the Agency has a mandate to administer the economic regulatory provisions affecting all modes of transport under federal jurisdiction found in various Acts of Parliament. The Agency:

- licenses air and rail carriers;
- administers those aspects of the international air agreements within its jurisdiction as one of Canada's aeronautical authorities, and participates in negotiations for new agreements;
- administers the railway revenue cap for Western grain;
- approves railway line construction; and
- protects the interests of Canadian ship operators.

While the Government of Canada's transportation policy encourages the market to regulate itself where competition exists, it acknowledges that regulation is necessary where parties are not served by effective competition.

In 2007-08, the Agency issued 2,532 administrative rulings and determinations, many of which were complex and often unique, to support the effective regulation of the federal transportation system.

The following are examples of Agency activities and Decisions by each federally regulated transportation mode. Further information can be found on the Agency's Web site at www.cta.gc.ca.

Air

Licensing

In 2007-08, the Agency processed 1,687 air licensing activities, which included applications for new licences, suspensions, cancellations and reinstatements. The Agency determined whether the applicants:

- had adequate liability insurance;
- held a Canadian aviation document issued by Transport Canada;
- were Canadian-owned and controlled when involving the operation of a publicly available Canadian air service;
- met certain financial requirements when proposing to use medium or large passenger aircraft; or
- no longer met the licensing requirements.

In some instances, the Agency suspended or cancelled a licence at the request of the licensee.

Of the 154 applications for new licences completed in 2007-08:

- 13 were denied,
- 14 were withdrawn, and
- 127 resulted in a licence being issued.

Of those 127:

- 14 licences were issued to six Canadian applicants for the operation of a scheduled international air service using large aircraft (having a seating capacity of more than 89 passengers) between Canada and a foreign country.

Air Canada	Services between Canada and	Kuwait Croatia Serbia
Air Transat	Services between Canada and	Switzerland
Skyservice	Services between Canada and	Croatia Mexico Jamaica Serbia
Sunwing Airlines	Services between Canada and	Saint Lucia
WestJet	Services between Canada and	Mexico St. Lucia Jamaica Dominican Republic
Zoom Airlines	Services between Canada and	Italy

In addition to the above, the Agency also issued a similar licence for Air Transat in January 2007 to operate services between Canada and Austria.

The Agency also granted 22 exemptions to section 59 of the *Canada Transportation Act*, allowing an exemption to these new applicants to advertise and sell air services while their application for licence was under review.

Subsequent to the coming into force of the new Canada-U.S. Agreement, the Agency undertook to issue amended licences to Canadian and U.S. carriers and did so for all 21 Canadian carriers and 668 U.S. carriers.

Tables 9 to 12 in Appendix D contain further statistics on air licensing activities.

Charters

An international charter air service is a non-scheduled service operated under a contractual arrangement between an air carrier and a charterer. Carriers holding a licence for a non-scheduled international service must obtain an Agency program permit or authorization to operate charter flights from Canada to a foreign country.

For resaleable charter flights which involve the carriage of passengers originating in Canada, the Agency also ensures that advance payments are protected. This is done by a letter of credit or agreement that requires the prompt refund of all advance payments received from tour operators and charterers should the air carrier fail to perform the flights.

Charter activities are detailed in Appendix D, Tables 13 and 14.

Sometimes, carriers are asked to provide a flight on short notice. Because Agency authorization is needed before flight departure, the Agency offers a 24-hour telephone service to deal with urgent cases outside its normal business hours.

The Agency handled 372 situations under this service, including 20 requiring approval by Agency Members, which allowed carriers holding a licence for a non-scheduled international service to operate non-scheduled charter flights from Canada to a foreign country.

Keeping Hope Air and Angel Flight airborne

Hope Air of Ontario and Angel Flight of British Columbia are charitable organizations which arrange free flights for people to health facilities for medical treatment. Hope Air uses seats donated by air carriers holding a licence and both organizations use a network of volunteer pilots or aircraft owners.

In late December 2006, the Agency found that in using volunteer pilots or aircraft owners, Hope Air and Angel Flight were operating a publicly available air service without holding the required licence. It ordered them both to cease operations but, recognizing the nature of their activities, advised them it would expeditiously process an application that would allow them to resume operations.

In early 2007, after considering documentation filed in support of applications for exemptions, the Agency was satisfied they met the regulatory requirements and permitted both Hope Air and Angel Flight to resume operations.

Tariffs

In 2007-08, the Agency received:

19,824	submissions from air carriers proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs on statutory notice.
8,143	special requests to amend tariffs on other-than-statutory notice.
98%	of these tariff submissions were received and processed electronically.

Agency staff also referred 27 tariff applications to Agency Members for a formal Decision.

The Agency has become increasingly concerned about the clarity and completeness of tariffs. In several instances carriers were directed to clarify their tariff and to ensure that the tariff reflects their policy.

With the new requirement in legislation for air carriers to post their tariffs on Web sites as a result of amendments to the *Canada Transportation Act* in 2007, there is increasing emphasis on ensuring that the applicable contract of carriage is written in plain language, understandable and complete.

The objective is to help inform passengers of the rights and obligations of all parties, so that they are better prepared to deal with any unexpected situations that occur.

Bilateral air transport agreements

Since January 1, 2007, officials of the Canadian Transportation Agency participated on the Government of Canada team to negotiate bilateral air transport agreements which govern scheduled and, in some cases, charter international air services between countries, including:

- Two rounds of negotiations with the European Union (EU).
- Successful negotiations of:
  - "Open Skies" agreements with New Zealand, Ireland and Iceland;
  - expanded air service rights with Japan, Jordan, Singapore, Barbados and Mexico;
  - new air transport agreements with Kuwait and Panama; and,
  - a renewed arrangement with Israel.

The open skies-type agreements provide greater options for Canadian travellers, shippers and businesses.

Discussions related to cities they served, capacity offered, pricing rules, as well as operational, conduct-of-business and administrative clauses.

The open skies-type agreements which support Canada's Blue Sky international air policy, significantly expanded air service opportunities between Canada and, in turn, provide greater options for Canadian travellers, shippers and businesses.

Each new agreement allows any number of air carriers from either country to operate passenger and all-cargo scheduled air services as frequently as desired, to and from any point in either country's territory. Air carriers are or will also be able to pick up traffic in each other's territory and continue to a third country as part of a service to or from their home territory.

The agreements allow airlines to react quickly to market conditions in setting prices and frequency of services.

A comprehensive Canada-EU agreement which would govern Canada's air transport relations with all 27 EU member states could strengthen Canada's current aviation relationships with European countries and open new markets.

The Canada-U.S. Open Skies agreement negotiated in 2006 came into effect in 2007, enabling Canadian passenger and cargo carriers to use the larger U.S. market as a platform to serve third countries and vice versa and promising new markets, new services, lower prices and greater competition.

Air carriers continued to seek Agency approval to serve some markets through code-share arrangements, which permit airlines to market partner airline flights as their own, offering additional means of serving markets. In other cases, air carriers sought Agency approval to be able to lease aircraft with flight crews from other air carriers.

During 2007-08, the Agency administered provisions related to the economic licensing and regulation of 77 bilateral agreements and arrangements.

In addition:

115 Decisions and Orders were issued related to bilateral air agreements and arrangements.

Of these,

67 concerned code-sharing or the leasing of aircraft with flight crews, and

42 dealt with applications for extra-bilateral authorities.

Enforcement

In 2007-08, enforcement officers completed periodic inspections of 232 Canadian-based air carriers licensed by the Agency and 34 passenger terminals.

These inspections ensure compliance with requirements of the *Canada Transportation Act* and regulations. Every air carrier based in Canada is inspected at least once every three years. Terminals are inspected to verify that personnel have appropriate training to meet the needs of persons with disabilities.

Under the Targeted Investigations Program, an additional 32 individuals and air operators were investigated for possible contraventions.

Operating a publicly available air service without a licence, the most serious violation, resulted in monetary penalties to two companies and one individual.

In the latter case, a person working for an outfitter in northern British Columbia used his privately-registered aircraft to transport hunters to remote hunting camps. The individual lacked a licence, liability insurance and a Canadian aviation document, all required to operate a publicly available air service within Canada.

As a result of all inspections, 78 other contraventions were identified. Sixty-nine informal warnings issued for minor contraventions and six formal warnings were issued.

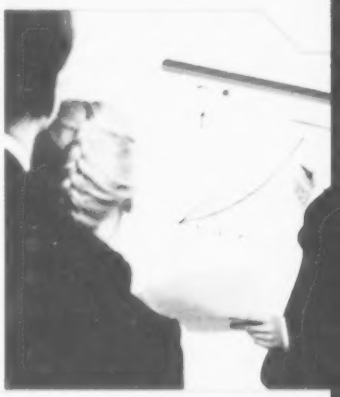
Financial fitness

In 2007-08, the Agency completed four reviews of the financial fitness of Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats. The purpose was to ensure they had a reasonable chance of success, which minimizes disruptions in service and protects consumers. All four applicants proved they had enough liquid funds to cover all start-up, operating and overhead costs for 90 days and were approved by the Agency.

Canadian ownership and control

In 2007-08, the Agency reviewed 77 Canadian applicants already operating or proposing to operate domestic or international air services. Five reviews involved major investigations because the companies had complex ownership structures or there were non-Canadian minority shareholders or business associates who might have exercised control over the applicant.

After verifying that the companies were Canadian-owned and controlled, incorporated in Canada, and that at least 75 percent of their voting interests were owned and controlled by Canadians, the Agency approved 74 applications. Three were denied on the basis that they were not Canadian.



Fuel surcharges

The Agency on three occasions considered the matter of air carrier fuel surcharges in 2007-08. It permitted carriers to apply a surcharge for tickets issued on or before October 31, 2007, and for tickets issued on or before March 31, 2008. In addition, it extended surcharges for tickets issued on or before October 31, 2008.

Undoubtedly, the cost of fuel will remain a key factor in air carrier pricing decisions.

Rail

Revenue caps for movement of Western grain

In each crop year, ending July 31, the Agency regulates the revenue earned by CN and CPR for their movement of Western grain.

The program's objective is to provide a flexible pricing regime for the railways while safeguarding grain shippers and farmers.

As part of this program, the Agency determines the maximum revenue entitlement (also known as the revenue cap) for CN and CPR, then their actual revenues, and compares the two.

On December 28, 2007, the Agency announced that CPR's grain revenue for 2006-2007 was $437,107,995, exceeding its cap of $433,347,642 by $3,760,353. CPR was ordered to pay the excess amount, plus a five-percent penalty of $188,018, to the Western Grains Research Foundation. CN's grain revenue for crop year 2006-2007 was $416,917,074, or $2,105,869 below its revenue cap of $419,022,943.

The Agency's calculation of the cap incorporates use of a "volume-related composite price index" based on price changes for railway labour, fuel, material and capital inputs. This complex calculation was the subject of a series of Agency announcements in 2007 and 2008:

- April 27, 2007: An Agency Decision set the index at 1.1611 for the 2007-08 crop year.
- June 28, 2007: Following passage of Bill C-11 on June 22 and upon request of the Minister of Transport, Infrastructure and Communities, an Agency Advisory provided advance notice of its intention to make a once-only adjustment of the index in line with the railways' actual costs of maintaining hopper cars.
- August 1, 2007: After CN and CPR indicated they were not satisfied that the Advisory had any legal effect, an Agency Decision set an interim index of 1.0884.

- February 19, 2008: Following industry and government consultations, an Agency Decision set the final index at 1.0639 for application to the entire 2007-2008 crop year. The index represents a $72.2 million reduction to 2007-2008 revenue caps, which translates to $2.59 per tonne based on forecasted tonnage of 27.85 million metric tonnes. The adjustment removed the historical hopper car maintenance costs that were "embedded" within the revenue caps and replaced them with costs incurred.

CN and CPR sought leave to appeal the February 19 Decision to the Federal Court of Appeal.

Railway costs

The Agency uses estimates of CN and CPR operating costs and costs of capital in many regulatory applications.

The model for estimating such costs is based on more than 400 factors submitted by the railway companies and approved by the Agency. The model may be used, for example, in adjudicating rail service and rate disputes, setting interswitching rates, determining overhead for charges for crossing construction and maintenance, and estimating the impact of possible changes in transportation policy.

Cost of capital rates are set annually, and used to develop the price index applied to determine the railway revenue cap for the movement of Western grain as well as other railway costing requirements.

For crop year 2007-08, the cost of capital rates for CN and CPR to be used in calculating their respective revenue caps were 8.68 percent and 8.12 percent, respectively.

Certificates of fitness

The Agency issued a new certificate of fitness to Great Canadian Railtour Company Ltd., to operate a railway once it was satisfied that the company had adequate third-party liability insurance. The company planned to operate a tourist train on CPR tracks between Vancouver and Banff or Calgary, and on CN tracks between Vancouver and Jasper, Vancouver and Whistler, and Whistler and Jasper via Prince George.

In addition, it approved changes to eight certificates of fitness to reflect changes in railway operations, and processed two cancellations.

A list of Canada's federally regulated railway companies is available on the Agency's Web site at www.cta.gc.ca.

The cost of capital is the return expected from an investment in a firm's debt or equity. The Act and applicable regulations recognize it as an established economic cost of railway operations.

Transit times

After CN acquired BC Rail in 2004, the Competition Tribunal asked the Agency to monitor CN's transit times for delivery of railway cars along the former BC Rail lines from northern British Columbia to Vancouver interchanges. Since January 1, 2007, the Agency issued its eighth through eleventh transit reports to CN, the connecting carriers in Vancouver and the Competition Bureau, covering periods from April 1, 2007 through March 31, 2008.

Statutory and other reviews

The Agency initiated the first comprehensive review since 1998 of the Uniform Classification of Accounts and Related Railway Records (UCA). The UCA defines the method of accounting and the framework of accounts for Canadian railway companies and provides instructions for recording operating statistics. It is used to meet the current and anticipated regulatory needs of the Agency and other federal departments.

The review will ensure consistency with the current Generally Accepted Accounting Principles, where practicable, so as to provide for accurate and meaningful data from Canadian railway companies.

The consultation process seeks input from all railway companies within the legislative authority of the Parliament of Canada.

Phase one of the review is expected to be completed in 2008.

The Agency began a statutory review in 2007 of the regulations which prescribe the terms and conditions for interswitching rail traffic, that is, the transfer of traffic from the lines of one railway company to the lines of another railway company. The regulations apply to rates for interswitching of traffic when the point of origin or destination is within 30 kilometres of the interchange point. The review is expected to be completed in 2008.

IN-DEPTH REVIEW

The Agency completed its in-depth review of The *Guide to Railway Charges for Crossing Maintenance and Construction*. The Guide is intended for use by federally regulated Class I railways when charging for crossing related work and systems agreed to by the parties or authorized by an Order of the Agency.

Marine

Licences for foreign ships to work in Canadian waters

In 2007-08, the Agency completed 164 applications for licences to use foreign ships to work in Canadian waters. Upon determination by the Agency whether a Canadian ship was suitable and available to provide the service, 141 were approved and six were denied. Sixteen others were withdrawn, and one was dismissed as speculative. Under the *Coasting Trade Act*, once approved by the Agency, the licences were issued by the Minister of Public Safety.

Capable but costly

In 2007, Great Lakes Feeder Lines Inc. sought a licence to use the CFL Prospect, a container ship registered in the Netherlands, to operate a dedicated container feeder service between Halifax, Montréal and Hamilton from August 2007 to July 2008. McKeil Marine Limited filed an objection, claiming that its Canadian-flagged vessel Kathryn Spirit could provide the service.

In its Decision, the Agency determined that the Kathryn Spirit was technically capable of offering the service but much more costly to operate, and not economically or commercially suitable.

The Agency balanced the interests and concerns of the existing Canadian operator with the aspirations of the Canadian company pioneering a new service with a purpose built ship that none of the existing Canadian operators have in their fleets. It determined that the service can only be implemented with a purpose-built modern ship crewed with Canadians that can meet the cost threshold for a commercially viable service.

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ASSESSMENT of the **ACT**

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As part of its annual report to Parliament, required by the *Canada Transportation Act*, the Agency is to include its "assessment of the operation of this Act and any difficulties observed in the administration of this Act".

Various sections of this annual report have described amendments to the Act which were passed by Parliament in 2007 and 2008.

Bill C-11, an Act to amend the *Canada Transportation Act* and the *Railway Safety Act* and to make consequential amendments to other Acts, received Royal Assent in June 2007.

Bill C-8, an Act to amend the *Canada Transportation Act* (railway transportation), received Royal Assent in February 2008.

The changes address many of the challenges the Agency has experienced in the operation of the Act, as discussed in its annual reports since inception of the legislation in 1996.

The following tables provide a summary of these challenges and how they have been addressed by recent legislative amendments. For more detailed description of these challenges, refer to the Agency's Web site at www.cta.gc.ca.

The Agency is in the process of implementing and monitoring these and other legislative changes as noted on pages 11 and 12 of the Annual Report as part of its expanded mandate. In addition, the Agency will be pursuing two initiatives related to its mandate and current legislation as follows:

Terms and conditions of tariffs

As noted, amendments to the Act now require carriers to prominently display signage at their business offices advising that their domestic tariffs, which contain the terms and conditions of transportation and constitute the contract of carriage, are available for inspection.

Various sections of this Annual Report have described amendments to the *Canada Transportation Act* which were passed by Parliament in 2007 and 2008.

In addition, terms and conditions of carriage must be posted on the carriers' Web sites, if they are used to sell air transportation. This greater transparency will allow passengers to be better informed of their rights and obligations. It will also better manage expectations of all parties thereby leading to fewer disputes and an improved travel experience.

The wording in tariffs can at times be technical and difficult to follow, which may affect the ability of consumers to understand the terms and conditions associated with air travel. Given the attention now drawn to tariffs, and to ensure that they use language understandable by consumers, the Agency will approach carriers and their industry associations to work towards greater clarity and plain language in their tariffs.

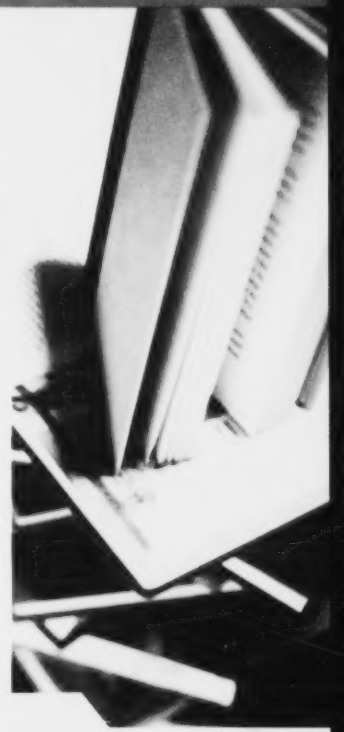
Reporting period

The Act requires the Agency to prepare a report each year on its activities, including an assessment of the Act and the number and nature of air travel complaints. The Report must be submitted to the Governor in Council through the Minister of Transport and is tabled in each House of Parliament. While the Act may be interpreted to be based on either a calendar or fiscal year, the Agency has in the past reported by calendar year ending December 31.

Like all departments and other federal government agencies, the Agency is required to submit its comprehensive Departmental Performance Report to Parliament on the basis of the fiscal year. Different reporting periods for the two reports may create public confusion about the performance of the Agency, and for such a small organization, involves a significant duplication of effort.

For this Annual Report, the Agency has therefore moved to a fiscal year basis, reporting on the year 2007-08 ending March 31, 2008. Narrative sections of the report refer mainly to activities during the fiscal year ending March 31, 2008, and where necessary cover the period since January 1, 2007. For comparative purposes, detailed statistics provided in Appendices reflect activities on both the 2007 calendar and 2007-08 fiscal years.

For timely public access on an ongoing basis, the Agency's Web site at www.cta.gc.ca will also now carry regularly updated statistics in order to better inform the Canadian public.



Issue	Current legislation	Operational challenges	Addressed in:
Final Offer Arbitration (FOA)	Section 161	Rates and conditions subject to FOA may not represent all rail-related shipper costs and conditions; shippers concerned about costs added after FOA decisions that raise expenses for movement of goods.	Bill C-8: Expands final offer arbitration to groups of shippers on matters common to all shippers and relating to rates or conditions for the movement of goods, when the shippers make a joint offer. Allows for suspension of any final offer arbitration process if both parties consent to pursue mediation.
Transfer and discontinuance	Sections 140 to 146.1	Various issues related to the absence of requirements for advance notice to Minister, Agency and affected governments, and Agency involvement in rail line transfer and discontinuance cases. Changes to net salvage value provisions would allow the Agency to take more factors into account such as the removal of infrastructure in order to reduce traffic on line discontinuance cases.	Bill C-11: Expands provisions on railway line transfers and discontinuances of rail corridors in urban areas that could be used for urban transit purposes. Governments and urban transit authorities can also now apply to the Agency for a net salvage value determination prior to accepting the railway company's offer to acquire a railway line.
Damage from construction or operation of railway lines	Subsection 95(2)	Stipulation exists on minimal damage by railway companies, but no mechanism for noise or vibration complaint investigation by any regulatory body.	Bill C-11: Gives the Agency authority to resolve noise and vibration complaints caused by the construction or operation of railways and public passenger rail services.

Issue	Current legislation	Operational challenges	Addressed in:
Domestic pricing	Section 66	Wording has led to difficulty in obtaining relevant information needed to make determinations regarding allegations of unreasonable pricing on non-competitive routes and has unduly restricted the Agency's ability to consider certain factors in reaching its conclusions on pricing investigations.	Bill C-11: Gives the Agency the ability to take into consideration any information or factors that it considers relevant to make a complete assessment of a complaint and to compel a carrier to produce any information it considers relevant.
Tariff information disclosure	Section 67	Air carriers must make copies of tariffs available for public inspection only at their business offices and are not required to publish their terms and conditions of carriage on their Web site.	Bill C-11: Requires domestic air carriers to post their terms and conditions of carriage on any Web site selling their domestic services. Enables the Agency to make regulations requiring a licensee or carrier to display terms and conditions of carriage of its international air services on its Web site if used for selling these services. Requires domestic air carriers to post signs prominently at their business offices advising passengers that their tariff, including the terms and conditions of carriage, is available for public inspection.

Issue	Current legislation	Operational challenges	Addressed in:
Notice of discontinuance and reduction of service	Section 64	Section 64 of the Act sets out public notice requirements prior to an air carrier discontinuing or reducing certain domestic air services. While a licensee may apply to the Agency for a reduced public notice period, the Agency must assess such a request against whether or not the licensee has provided an opportunity for elected officials of the municipal or local government to meet and discuss with the licensee the impact of the proposed discontinuance or reduction. There is an inconsistency between the requirements under these provisions, insofar as a licensee would not have yet given notice when making its application for a reduced notice period.	Bill C-11: Removed the contradictory provisions concerning public notice requirements.
Advertising Air Fares	Section 64	Advertised air fares often represent only a fraction of the total cost of air travel and do not include fuel and insurance surcharges, airport improvement fees, air travellers' security charge, and applicable taxes.	Bill C-11: Once in force, provides for the development of regulations by the Agency to ensure transparent airline advertising practices are sufficiently transparent to allow consumers to identify the true cost of an advertised airfare for flights within or originating in Canada.